IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER NO. 2014-AFO- 13
John Fluit Jr. Facility #56833 NPDES Permit No. 6056833 **Lyon County, Iowa**	

TO: John Fluit Jr.
1948 240th St.
Inwood, IA 51240

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (Department) and John Fluit, Jr. (Mr. Fluit) for the purpose of resolving environmental violations at Mr. Fluit's open feedlot located at 1948 240th St., Inwood, IA. Mr. Fluit neither admits nor denies the allegations contained in this order and both parties enter into this agreement for the purpose of settlement.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Don Cunningham, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand Gateway North, Suite E17
Spencer, Iowa 51301-2200
Phone: 712/262-4177

Relating to legal requirements:
Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50323
Phone: 515/281-0824

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any rder necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, Iowa Code

chapter 459A and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

Mr. Fluit neither admits nor denies the following statements of facts and enters into this agreement for the purpose of settlement:

1. Mr. Fluit owns and operates a 4,000 head beef cattle feeding operation located in the southwest quarter of Section 16, T98N, R47W, Richland Township, Lyon County, Iowa. This property is locally known as 1948 240th Street, Inwood, Iowa. On July 2, 2011, this feedlot was issued a National Pollutant Discharge Elimination System (NPDES) permit. This feedlot utilizes an alternative technology (AT) system for storing and applying manure generated on site. This system consists of a solid settling structure, vegetated infiltration basin (VIB) and a vegetated treatment area (VTA).

2. On August 29, 2013, Department Field Office 3 received a complaint from John Wiekamp which alleged that a stock pond he owned was contaminated with manure. Following receipt of this complaint, Don Cunningham, an Environmental Specialist with the Department, went to the site to investigate.

Throughout the day Mr. Cunningham collected laboratory samples, took photographs, and made the following observations at the below sites:

Site B1: 250th Street, (1 mile south of point of discharge, downstream). At this location Mr. Cunningham observed that the water was brown, thick and extremely discolored. Mr. Wiekamp joined Mr. Cunningham at this location and stated that the creek had been flowing in this condition for several days and offered to take Mr. Cunningham to his stock pond to observe the conditions. At the location of B1 Mr. Cunningham took laboratory samples, the results indicated the following: E.coli concentration of 920,000/100mL; Ammonia nitrogen as N (N) concentration of 330 mg/L; total suspended solids (TSS) concentration of 15,000 mg/L; and a total biological oxygen demand 5 day (BOD5) concentration of 36,000 mg/L.

Site 1: Mr. Wiekamp's stock pond, (downstream of point of discharge). At this location Mr. Cunningham observed that the water in the pond was nearly black in color and had a strong odor of manure. Mr. Cunningham informed Mr. Wiekamp that he would follow the manure path up stream and attempt to find the source of the contamination.

Site AA1: 240th Street, (downstream of point of discharge). From the location of B1, Mr. Cunningham followed the flow path north for one mile to 240th Street. At this location evidence of contamination was still present in small pools of manure contaminated water and manure contaminated water in the creek bed was observed.

Site A1: North of 240th Street (point of discharge). At this location, Mr. Cunningham observed a flow path of manure leaving the cornfield adjacent to the creek bed. Mr. Cunningham followed the flow path of manure into the cornfield. This flow path terminated at a small dirt road through the cornfield that leads to the Fluit Feedlot. At this location Mr. Cunningham took laboratory samples, the results indicated the following: E.coli concentration of less than 2,400,000/100mL; N concentration of 2,200 mg/L; TSS concentration of 16,000 mg/L; and a BOD5 concentration of 28,000 mg/L.

Site C1: In an effort to determine the severity of the on-going discharge, Mr. Cunningham traveled two miles south to the first bridge south of the stock pond. At this location the creek is narrow and shallow and the water was mostly clear. A field sample of this water indicated the presence of ammonia at 15-20ppm. No fish were observed at this location either alive or dead. Mr. Cunningham took laboratory samples, the results indicated the following: E.coli concentration of 24,000/100mL; N concentration of 17 mg/L; TSS concentration of 41 mg/L; and a BOD5 concentration of 83 mg/L.

Next, Mr. Cunningham drove to the Fluit Feedlot. Upon arriving at the feedlot, Mr. Cunningham made contact with Mr. Fluit and inquired about any recent manure application activities in the area. Mr. Fluit informed Mr. Cunningham that on August 27, 2013, one of his employees had applied approximately 12 loads from a slinger spreader with each load containing approximately 3,000 gallons of manure. Mr. Fluit stated that he had directed an employee to remove several loads of semi-liquid manure from the solid settling structure and apply them in the cornfield. He instructed the employee to observe the flow of manure and to stop the application when the manure had flowed down the hill, approximately 2/3 of the way to the creek. Mr. Fluit stated that a few loads had been disposed of in the same manner earlier in the spring when the corn was approximately knee high. Then, Mr. Fluit showed Mr. Cunningham the spreader which was used in the manure application. It was a Knight and Sunger model 8140 slinger spreader which utilizes beaters to eject manure from the side of the tank, approximately 18-24 inches above the ground.

Mr. Cunningham informed Mr. Fluit that the manure had run southwest into the creek bed and had flowed downstream and reached a stockpond owned by Mr. Wiekamp. This stock pond is over a mile south of where Mr. Fluit had land applied the manure. Mr. Cunningham told Mr. Fluit that any actions he can take to minimize the downstream impact of the manure discharge would be beneficial. Mr. Fluit and Mr. Cunningham discussed the option of damming the creek at 240th street to reduce the potential for a continued release of manure and they discussed cleaning out the ditch or pumping the pond. Mr. Fluit asked about the process going forward and Mr. Cunningham informed him that he would complete his investigation, obtain a number of samples of the contaminated water and send those samples to the lab for analysis. Mr. Cunningham informed him that it was likely the matter would be referred to the Department's Legal Services Bureau for enforcement.

Next, Mr. Cunningham drove to the farm owned by Mr. Wiekamp to inform him of the findings of his investigation. While on site talking with Mr. Wiekamp, Mr. Fluit arrived and

inquired as to what actions he could take to assist Mr. Wiekamp in feeding and watering his cattle while the pond and pasture was largely unusable. Mr. Cunningham again told Mr. Fluit that any actions he could take to limit the impact of the incident would be beneficial. Then they discussed the options of pumping the pond and flushing the ditch with well water from Mr. Fluit's farm.

Mr. Fluit then called Mr. Cunningham and informed him that he had hired Jochum Pumping Service to begin pumping the pond out that night.

3. On August 30, 2013, Mr. Cunningham spoke with Mr. Fluit by phone. During this conversation Mr. Fluit informed Mr. Cunningham that Jochum Pumping Service had arrived on site, was able to run lines from the pond back to Mr. Fluit's AT system and at 1:00 am they began pumping the pond. The pumping continued until no more liquid could be removed. The pond was emptied of all contaminated water by approximately 4:00 am. Mr. Fluit informed Mr. Cunningham that he intended to excavate the pond, apply the solids to a nearby field and then flush the ditch with water from his wells. At this time, Mr. Fluit also informed Mr. Cunningham that he had misspoke on the previous day when he said that the only other time this type of application had occurred was in the spring when the corn was knee high. He stated that the last application had occurred on the August 15th and 16th of 2013. At that time approximately 12 loads were applied in the same manner as August 27, 2013.

4. On August 30, 2013, Cindy Martens an Environmental Specialist Senior with the Department and Amber Wolf an Environmental Specialist with the Department conducted a follow up investigation. Throughout the day Department staff made the following observations and took photographs at the below sites:

Site H1: Bridge at Highway 18 between Dipper Avenue and Dogwood Avenue in Sioux County, (downstream of point of discharge). At this location Department staff observed clear water and many live fish.

Site G1: Bridge at 300th Street between Dipper Avenue and Coolidge Avenue, Sioux County (downstream of the point of discharge). At this location Department staff observed clear water and many live fish.

Site F1: 290th Street between Dipper Avenue and Coolidge Avenue (downstream of the point of discharge). At this location Department staff observed that the stream is very small, the water was clear and live minnows were present.

Site E1: Bridge at 280th Street between Coolidge Avenue and Dipper Avenue (downstream of the point of discharge). At this location Department staff observed clear water and live minnows. A field test indicated that ammonia levels were 0.2ppm.

Site D1: Bridge at 270th Street between Coolidge Avenue and Dipper Avenue (downstream of the point of discharge). At this location Department staff observed that the water appeared to be scummy and there was no flow. A few small minnows were alive in pools of water on the edge of the stream. A field test indicated that ammonia was of 3 ppm. Photos were taken which document these observations.

Site C1 and C2: Bridge at 260th Street between Coolidge Avenue and Cleveland Avenue (downstream of the point of discharge). At this location Department staff observed that the water appeared to be scummy and no fish were observed either alive or dead. Field tests indicated that ammonia was approximately 150 ppm. This site was observed at the beginning of the investigation and at the end. The observations remained the same during both visits. Photos were taken which document the observations.

Site B1: Mr. Wiekamp's stock pond (downstream of the point of discharge). At this location the Department observed that a drag hose was attached to large pumping equipment owned by Jochum Pumping Service. Jochum Pumping Service was pumping out as much liquid as possible from the manure contaminated pond and north for approximately 1.25 miles to Mr. Fluit's cattle facility. The manure contaminated water was then being run through Mr. Fluit's AT system. Department staff took photos which document these observations.

Site I1: At the outlet to Mr. Wiekamp's pond (downstream of the point of discharge) Department staff observed that that the south side of the outlet was covered and closed using a plastic tube held in place with a cement block. Department staff also observed standing water outside the outlet which appeared to have been released prior to the outlet closure; this water was dark in color and was bubbling. No flow was observed beyond this pooled water. Photos were taken which document these observations.

Next, Department staff proceeded to Mr. Fluit's facility. Once on site, Department staff spoke with Mr. and Ms. Fluit who reported that they had employees clean the manure solids out of the waterway for approximately 1.5 miles downstream of Mr. Fluit's facility, to Mr. Wiekamp's property. They explained that the manure was being pumped out of Mr. Wiekamp's stock pond to their facility and run through their AT system. Mr. and Ms. Fluit stated that they had hired a "long arm" excavator to reach into the pond and clean out all of the solids. Mr. Fluit stated that he would pump clean water to Mr. Wiekamp's pond from his well at a rate of 60 to 80 gallons per minute and then pump it back to his facility for treatment until the water in the pond appeared clean. Mr. Fluit stated that he would be pumping it, at a minimum, through the holiday weekend which was August 31 through September 2, 2013. He stated that he did not need to remove the manure from the solids settling area, but thought at the time it was a good idea so that the area could dry out better. Mr. Fluit had instructed a hired man to do this using an 8140 Knight Sunger manure hauler. Department staff explained to Mr. Fluit that his NMP did not allow for application of liquids.

Next, Department staff drove to the location where the manure was land applied into the standing corn. Department staff identified 7 locations were the applicator had stopped and "slung" manure. Department staff detected a strong manure odor and observed areas in which manure was up to the bottom leaf on the cornstalks. Department staff took photos documenting these observations.

5. On August 31, 2013, Department staff instructed Mr. Fluit to clean up the areas of standing manure in the cornfield.

6. Mr. Fluit remained in continuous contact with Department staff though September 3, 2013. During this time he reported that Jochum Pumping Service needed to move its pumping equipment to another location because it was done pumping water from Mr. Fluit's facility to Mr. Wiekamp's. Mr. Fluit stated that he planned to fill Mr. Wiekamp's pond over the 6 inch fill level and keep the outlet plugged. He planned to do this because no rain was predicted. Thus, the combination of sun and time would allow the manure to settle which will assist in brining any remaining ammonia or other contaminants to acceptable levels. In addition, Mr. Fluit stated that when rain was in the forecast he would remove the outlet covering and allow the pond to overflow so that the stock dam was not ruined.

7. On September 3, 2013, Ms. Martens conducted a follow-up investigation. During this investigation Ms. Martens documented that the corn was dying along the path of the manure flow.

8. On October 3, 2013, the Department sent Mr. Fluit a Notice of Violation and Notice of Referral for the above discussed violations. This letter also included a copy of the Report of Investigation and a copy of the relevant Iowa Administrative Code provisions.

IV. CONCLUSIONS OF LAW

Mr. Fluit neither admits nor denies the following conclusions of law and enters into this agreement for the purpose of settlement:

1. Iowa Code section 459A.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 states that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director. The laboratory sample results and the visual observations made by Department Field Office 3 during the investigation confirm that cattle manure from Mr. Fluit's feedlot was discharged to a water of the state. A permit has not been issued to Mr. Fluit which allows this discharge. Therefore, the above mentioned facts indicate a violation of this provision.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants in the tributary. The elevated levels would be considered acutely toxic to aquatic life. Additionally, the discharge of manure from Mr. Fluit's feedlot to the tributary created objectionable color and odor and interfered with livestock watering. The above mentioned facts indicate violations of the general water quality criteria.

4. NPDES Permit No. 60-56-8-33 was issued to Mr. Fluit in July 2011, this permit is a no discharge permit. The above mentioned facts indicate multiple violations of this NPDES permit.

V. ORDER

THEREFORE, the Department orders and Mr. Fluit agrees to do the following:

1. Mr. Fluit shall immediately cease all application of liquid manure from his feedlot until his NMP is updated to include liquid manure application;

2. Mr. Fluit shall submit an updated NMP within 60 days of the issuance of this Order;

3. Mr. Fluit shall operate and maintain his feedlot in accordance with his NPDES permit at all times;

4. Mr. Fluit shall pay a penalty in the amount of $9,000.00 to Department within 30 days of the date the Director of the Department signs this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to $5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the

issuance of an administrative consent order with an administrative penalty of $9,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." It is estimated that Mr. Fluit improperly land applied approximately 12 loads of manure with each load containing approximately 3,000 gallons on two separate occasions during the month of August 2013. It is estimated that a total of approximately 72,000 gallons of manure was improperly land applied. Mr. Fluit avoided the costs of properly disposing of this manure and properly operating his feedlot in accordance with his NPDES. It is estimated that Mr. Fluit's avoided costs are at least $2,500.00 and therefore, $2,500.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Department staff documented a manure discharge to a water of the state. By failing to comply with Mr. Fluit's NPDES permit and allowing manure to discharge to a water of the state, Mr. Fluit endangered the water quality of the nearby tributary. Failure to comply with the water quality regulations and the NPDES permit threatens the integrity of the regulatory system. Therefore, $2,500.00 is assessed for this factor.

Culpability –Mr. Fluit has a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that his conduct is subject to Department's rules. Mr. Fluit also has an obligation to understand the terms of his NPDES permit. The manure release was a result of improper operation of Mr. Fluit's animal feedlot and demonstrates a lack of consideration for the environment. Moreover, the improper application occurred on two occasions. Therefore, $4,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly and with the consent of Mr. Fluit. For that reason Mr. Fluit waives his right to appeal this Order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this

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ISSUED TO: John Fluit, Jr.

Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Bruce Trautman for Chuck Gipp

Chuck Gipp, DIRECTOR
Iowa Department of Natural Resources

Dated this 19 day of May, 2014.

John Fluit, Jr.

Dated this 5th day of May, 2014.

Facility #60582; Carrie Schoenebaum, Field Office 3, EPA, VIII.D.1.b and I.B.2